

Before the
COPYRIGHT ROYALTY JUDGE
Washington, D.C.

IN THE MATTER OF:

Phase II Distribution
of the 2004-2009
Cable Royalty Funds
:Docket No.
:2012-6
:CRB CD
:2004-09
:(Phase II)

IN THE MATTER OF:

Phase II Distribution
of the 1999-2009
Satellite Royalty Funds
:Docket No.
:2012-7
:CRB SD
:1999-2009
:(Phase II)

Volume 1

Monday,
December 8, 2014

Room 1M-403
Madison Building
Library of Congress
101 Independence Avenue, SE
Washington, DC

The above-entitled matter came on
for hearing, pursuant to notice, at 9:30 a.m.

BEFORE: THE HONORABLE SUZANNE M. BARNETT
THE HONORABLE JESSE FEDER
THE HONORABLE DAVID R. STRICKLER
Copyright Royalty Judges

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1 Plovnick is saying is, okay, if you don't have a
2 sponsoring witness, but there is good cause, they
3 should get in anyway. And I understand her
4 log.c.

5 So, I have no objection.

6 JUDGE BARRETT: I'm not sure I
7 understand the logic of the rule, to be honest.

8 (Laughter.)

9 But inasmuch as these are documents
10 that IPG produced, I don't think there is a basis
11 to object to their being admitted.

12 MR. BOYDSTON: And I don't have any
13 objection in that regard. It was just the
14 technical aspect.

15 MR. MacLEAN: No objection from the
16 SDC.

17 JUDGE BARRETT: Anybody want to talk
18 about the technical aspect of that objection?

19 MR. MacLEAN: Your Honor, considering
20 that this is a Board that has found itself not to
21 have subpoena power, when it comes to documents
22 produced by the opposing party, we really have

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1 essentially no choice but to simply submit them
2 into evidence and offer them into evidence. And
3 so, I don't see any basis at all for an objection
4 with respect to that.

5 Beyond that, I think we will just have
6 to address it as they come.

7 JUDGE BARRETT: I certainly hope
8 everyone here, and all of your colleagues in this
9 particular segment of the Bar, will join with us
10 as we slog our way through the regulations and
11 try to make amends for this sort of thing.

12 MS. PLOWNICK: Your Honor, we agree
13 with SDC, and we would welcome the opportunity to
14 participate in that effort with you.

15 JUDGE BARRETT: Thank you.

16 MR. BOYDSTON: And I agree. I agree.
17 This provides a little clarification, I think,
18 for all of us here.

19 MR. MacLEAN: And, Your Honor, I would
20 also add, if the time were to come that the Board
21 chooses to seek to promulgate new rules, we would
22 be very happy to submit public comments on those.

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1 JUDGE BARRETT: I'm sure you would.

2 MS. PLOWNICK: As would MPAA.

3 JUDGE BARRETT: You know, this is not
4 a group that has ever been reticent.

5 (Laughter.)

6 Exhibit 308 is admitted for good
7 cause. Without saying the other rule doesn't
8 apply, I am just going to assign good cause, as
9 expressed by Mr. MacLean.

10 MS. PLOWNICK: All right. Thank you,
11 Your Honor.

12 (Whereupon, the document marked as
13 MPAA Exhibit No. 308 for
14 identification was received in
15 evidence.)

16 MS. PLOWNICK: So, MPAA calls Jane
17 Saunders to the stand.

18 WHEREUPON,

19 JANE SAUNDERS
20 having been called for examination by Counsel for
21 the MPAA, and having been duly sworn, was
22 examined and testified as follows:

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1 JUDGE BARRETT: Please be seated.

2 DIRECT EXAMINATION

3 BY MS. PLOWNICK:

4 Q Good morning, Ms. Saunders.

5 My name is Lucy Plovnick, for the
6 record, and I am counsel for MPAA.

7 Would you please state your -- did you
8 already state your name and spell it for the
9 record? If not, please do so.

10 A I have not and, yes, I will. It is
11 Jane, J-A-N-E, Saunders, S-A-U-N-D-E-R-S.

12 Q Are you currently employed?

13 A Yes, I am.

14 Q Who is your employer?

15 A The Motion Picture Association of
16 America.

17 Q And what is your position at MPAA?

18 A I am the Senior Vice President for
19 Rights Management, Policy, and Relations.

20 Q How long have you been in that
21 position?

22 A In that position, since the end of

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1 2006, beginning of 2007. I have been with the
 2 MPAA nearly 18 years.
 3 Q And what are your responsibilities?
 4 A As the SVP for Rights Management,
 5 Policy, and Relations, I supervise two of MPAA's
 6 royalty distribution programs, one in Canada, one
 7 in the United States. I handle all of the
 8 relationships between MPAA and its core members,
 9 as well as other producers we represent by
 10 contract with what we call CMOs, which are
 11 Collective Management Organizations, around the
 12 world.
 13 Q You just mentioned that you work with
 14 CMOs around the world. Do you have any specific
 15 ones with which you work?
 16 A Yes. I work with AGICOA, which is the
 17 largest representative claiming for producers in
 18 the field of Cable Retransmission Royalties. To
 19 my knowledge, it's the largest one in the world,
 20 possibly the only one in the world.
 21 I work with EGEDA, which has been
 22 mentioned in some of the pleadings here today,

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1 which is a CMO representing the totality of
 2 Spanish producers and representing other
 3 producers as well in a host of claims for
 4 remuneration, including cable retransmission
 5 remuneration.
 6 I sit on the Board of two Danish CMOs,
 7 and I liaise very closely with -- oh, and one
 8 more. Sorry. A German Collective Management
 9 Organization, oddly with offices in the United
 10 States. And I work with a host of other CMOs,
 11 essentially, one or more in every country in the
 12 EU and beyond.
 13 Q So, do you speak any foreign
 14 languages, Ms. Saunders?
 15 A I do.
 16 Q Which ones do you speak?
 17 A I speak French, Spanish. I have a
 18 working knowledge -- I used to speak Italian
 19 pretty well and German -- I have a working
 20 knowledge, however, of German and Italian now.
 21 Q So, let's talk a little bit about your
 22 background and experience. What is your

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1 educational background?
 2 A I received my BA from Dartmouth
 3 College and my law degree from Emory University
 4 Law School.
 5 Q Are you admitted to any state Bars?
 6 A I am. I am admitted to the State Bar
 7 of Georgia as well as D.C. However, I'm inactive
 8 in both.
 9 Q Okay. Prior to working at MPAA, what
 10 did you do?
 11 A I was a practicing attorney, an
 12 associate attorney. I was a bankruptcy litigator
 13 and, then, towards the end of my law career in
 14 the private sector, I worked on compulsory
 15 licensing matters, including on proceedings
 16 before predecessors of this body.
 17 Q And which predecessor would that be?
 18 A The CRT, Copyright Royalty Tribunal.
 19 Q And have you ever testified before the
 20 Copyright Royalty Judges or any of their
 21 predecessors?
 22 A I have never testified in any capacity

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1 whatsoever.
 2 Q This is your first time?
 3 A This is my first time.
 4 Q Okay. Ms. Saunders -- and may I
 5 approach the witness?
 6 JUDGE BARRETT: You may.
 7 BY MS. PLOVNICK:
 8 Q You have two exhibit binders there
 9 next to you.
 10 A Uh-hum.
 11 Q So, I am going to direct your
 12 attention to what has been premarked as MPAA
 13 Exhibits 309 and 310. And I think that one is in
 14 the back of that binder, and the other is at the
 15 very front of this binder.
 16 A Oh, lucky me, two giant binders.
 17 Okay. All right.
 18 Q Have you found what has been premarked,
 19 as MPAA Exhibits 309 and 310?
 20 A I have.
 21 Q Have you seen MPAA Exhibits 309 and
 22 310 before?

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1 A Yes. They are my direct testimony in
2 each of the proceedings at issue here.
3 Q And speaking just of MPAA Exhibit 309,
4 which proceeding is that testimony for?
5 A The distribution of 2004, 2005, et
6 cetera, through 2009 of Cable Royalty Funds.
7 Q And that is your written direct
8 testimony?
9 A It is.
10 Q What date was it filed?
11 A May 9th.
12 Q And then, looking at MPAA Exhibit 310,
13 what proceeding was that filed in?
14 A The distribution of 1999 through 2009
15 Satellite Royalties, also filed May 9.
16 Q And there are two appendices to
17 Exhibit 309. Would you please briefly describe
18 what they contain?
19 A Yes. They contain, Appendix A is a
20 list of our represented claimants in each of the
21 royalty years at issue. And then, Exhibit B is a
22 list of MPAA claimed works in each of the royalty

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1 years in issue.
2 Q And does MPAA Exhibit 310 also have
3 appendices containing MPAA's claimant and title
4 lists?
5 A Yes.
6 Q Do you have any corrections to MPAA
7 Exhibits 309 or 310?
8 A No, I do not.
9 Q And do you declare today that MPAA
10 Exhibits 309 and 310 are true and correct and of
11 your personal knowledge?
12 A Yes.
13 MS. PLOVNIK: So, I move to admit
14 MPAA Exhibits 309 and 310.
15 MR. MacLEAN: No objection, Your
16 Honor.
17 MR. BOYDSTON: No objection.
18 JUDGE WANNETT: 309 and 310 are
19 admitted.
20 (Whereupon, the above-referred to
21 documents were received into evidence
22 as MPAA Exhibits Nos. 309 and 310.)

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1 MS. PLOVNIK: Thank you, Your Honor.
2 BY MS. PLOVNIK:
3 Q Ms. Saunders, are there any
4 differences between your cable testimony and your
5 satellite testimony in these proceedings?
6 A Yes, there are.
7 Q What are the differences?
8 A Well, the programs that would be --
9 the claimants and the programs in each of the
10 Exhibits A and B, respectively, of 309 and 310
11 will have differences from royalty year to
12 royalty year.
13 Q Why?
14 A Because different claimants claim in
15 each royalty year and in each royalty fund year
16 to year, different works are retransmitted, and,
17 therefore, claimed by those claimants, and of
18 course there are different rules for
19 compensability of programs in the cable and the
20 satellite funds under the relevant Copyright Act
21 sections.
22 Q And with regard to satellite

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1 programming, what is the one difference that
2 might come to mind?
3 A The key difference is that for
4 satellite royalties network programming is
5 compensable, whereas in cable, under Section 111,
6 it is not.
7 Q Are there any MPAA-represented
8 claimants that are cable-only claimants or
9 satellite-only claimants?
10 A Yes, there are. For example, the
11 Canadian Broadcasting Corporation is a cable-only
12 claimant.
13 Q They don't file satellite claims?
14 A No. Not yet.
15 Q So who does MPAA represent in this
16 proceeding?
17 A We represent a wide variety, a large
18 cross-section I would rather say, of producers
19 from our core studio members, our six core studio
20 members, all the way to -- through small
21 independent producers, my favorite being Alex
22 Queen of Animal Rescue. No offense to any other

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1 claimants here present.

2 Q Does MPAA also represent non-team
3 sports?

4 A We do. We represent non-team sports,
5 and in terms of works --

6 Q Just give me an example, like for --
7 maybe like PGA Tour, is that --

8 A Oh, yes. PGA Tour Classic, yes.

9 MR. MacLEAN: Objection. Leading.

10 MS. PLOVNICK: Sorry.

11 JUDGE BARRETT: That's sustained but
12 allowed. Go ahead.

13 BY MS. PLOVNICK:

14 Q So but MPAA also represents the
15 copyright owners of non-team sports, is that --

16 A Yes. Oh, yes. Yes, we represent the
17 copyright owners for a variety of works, a very
18 diverse variety of works -- movies, syndicated
19 series, non-team sports programming, talk shows,
20 specials.

21 Q So you mentioned that the list of
22 MPAA-represented claimants and titles in your

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1 testimonies are broken down by royalty year. Why
2 is that done?

3 A Because different claimants claim in
4 different royalty years, depending on whether
5 they have a work that has been retransmitted for
6 a claimant that year. A compensable work, I
7 should say.

8 Q Does MPAA file royalty claims?

9 A No, we do not.

10 Q Who files MPAA's claims?

11 A Our individual claimants file royalty
12 claims either in their capacity as owner or
13 representative. They file joint -- sorry, we
14 have agents who file joint claims. We represent
15 agents who file joint claims.

16 Q Approximately how many claimants does
17 MPAA represent each year?

18 A We represent approximately 4,000
19 claimants in each royalty year.

20 Q Now, does MPAA represent each of those
21 4,000 claimants directly?

22 A No. We only represent -- we have

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1 about 100 direct representations, and that number
2 is rounded out by the number of joint claimants
3 or the claimants represented by our joint
4 claimants.

5 Q So does MPAA's representation
6 agreement with its claimants, the specific
7 agreement, does it authorize MPAA to represent
8 the interests of entities appearing on joint
9 claims?

10 A It does.

11 Q And what are the general requirements
12 for a party to become an MPAA-represented
13 claimant?

14 A To become an MPAA-represented
15 claimant, a party has to have filed a claim, a
16 valid claim, with the Copyright Office in the
17 relevant royalty year. They have to have a
18 representation agreement with us, and I think
19 they have to be -- they have to be an authorized
20 owner or representative of a work that is being
21 claimed.

22 Q Do they also have to provide MPAA with

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1 a copy of the claim as filed?

2 A Oh, yes. Of course.

3 Q Were those requirements in place for
4 the 2004 through 2009 cable and 2000 through 2009
5 satellite royalty years?

6 A Yes, they were.

7 Q For the years in question, how did
8 MPAA assure itself that its claimants are
9 entitled to royalties for any particular title?

10 A We have a certification process
11 whereby claimants certify their entitlement to
12 claim individual specific programs.

13 Q What information is typically included
14 in a title certification?

15 A The name of a claimant, the capacity
16 in which they file, whether individually or as an
17 agent representing the rights at issue, so the
18 name, the capacity in which they are filing, the
19 fact that they have filed a valid claim with the
20 Copyright Office, and attached to each of our
21 certifications of entitlement is a list of the
22 programs that has been claimed by the respective

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1 claimant.

2 Q And who would sign the certification
3 that would be submitted to MPAA?

4 A It would be the owner or the
5 authorized representative of the owner.

6 Q Were all of the titles listed on
7 Appendices B to MPAA Exhibits 309 and 310 subject
8 to your certification process?

9 A Yes, they were.

10 Q All right. Now, Ms. Saunders, I would
11 like to ask you a few questions about the records
12 that MPAA maintains related to the certification
13 process you just described. For the royalty
14 years at issue in this proceeding, which are, as
15 I said just a few minutes ago, 2000 to 2009
16 satellite and 2004 through 2009 cable, which are
17 for the Program Suppliers category, does MPAA
18 maintain an electronic database for its
19 certifications?

20 A No, we do not.

21 Q Can you explain to the Judges why
22 MPAA's records for that time period are not

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1 electronic?

2 A Yes. For 30 years, the same
3 individual, Marsha Kessler, who reported to me
4 for only a brief portion of nearly those 30
5 years, was in charge of this program and our
6 claimants and our certification process. She
7 kept meticulous but hard copy records of all of
8 her claimants and their claims.

9 Should I go on to say that --

10 Q So at any point in time, did you --
11 was there ever a point in time where MPAA decided
12 to create an electronic database or --

13 A Yes. Yes. When I became Ms.
14 Kessler's supervisor at the beginning of 2007, I
15 found it in -- I thought it was the better course
16 of wisdom to allow her to continue to manage the
17 program in the way that she had, given her
18 sterling reputation amongst our claimants and her
19 meticulous work habits and her long years of
20 experience.

21 However, as when she -- when she
22 retired, which was in 2010, I directed my staff

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1 at the MPAA to embark on a mission to create an
2 electronic database for our program. And we
3 invested almost two years of time and quite a lot
4 of money creating such a database, which exists
5 as of royalty year 2010 and subsequent royalty
6 years.

7 Q Are the royalty years at issue in this
8 proceeding covered by that database?

9 A No, they are not.

10 Q At some point in this proceeding, did
11 the Copyright Royalty Judges issue an order
12 requiring MPAA to create an electronic file
13 providing information taken from MPAA's paper
14 certifications?

15 A Yes, they did.

16 Q And what, if anything, did you do in
17 response to the discovery order issued by the
18 Judges?

19 A I directed my counsel to create an
20 electronic record, basically a compendium of the
21 information that we have on our -- on the
22 certification reports, for each of the relevant

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1 royalty years.

2 Q Let me direct your attention to what
3 has been premarked as MPAA Exhibit 333. That's
4 in Volume 2.

5 A Yes. I'm going to get rid of
6 Volume 1, if that's okay with you. 333?

7 Q MPAA -- premarked as MPAA Exhibit 333.

8 A Okay. Ah, yes.

9 Q Have you seen this document before?

10 A I have.

11 Q And what is it?

12 A This is a communication or a letter
13 from my counsel, Greg Olaniran, to TPG's counsel,
14 Brian Boydston, instructing or advising him that,
15 pursuant to the order of the Board, we were
16 providing a file -- I guess two files of -- in
17 Excel, two Excel files, containing the results of
18 the certifications that we have for each of the
19 royalty years, that MPAA had.

20 MS. PLOWECK: I'm going to move to
21 admit MPAA Exhibit 333 into evidence.

22 MR. BOYDSTON: No objection, Your

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1 Honor.

2 MR. MacLEAN: No objection, Your

3 Honor.

4 JUDGE BARRETT: 333 is admitted.

5 (Whereupon, the above-referred to

6 document was received into evidence as

7 MPAA Exhibit No. 333.)

8 BY MS. PLOWNICK:

9 Q Ms. Saunders, looking at MPAA Exhibit

10 333, does it mention the name of the electronic

11 file that MPAA's counsel created for IPG?

12 A It does. Maybe there is only one.

13 I'm mistaken. So actually Owner Title 2000-2009,

14 so there would have been only one.

15 Q So, and can you please say the name of

16 that file?

17 A Oh, I'm sorry. So MPAAOwnerTitle

18 2000-2009 (6308249).xls.

19 Q So, and now let me direct your

20 attention to what has been premarked as MPAA

21 Exhibit 334, which is the next tab in the binder.

22 Have you seen this before?

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1 A Yes. Yes, I have.

2 Q And what is MPAA Exhibit 334?

3 A This is an extract of a page of the

4 electronic file that MPAA created at its own

5 expense to assist IPG in this proceeding pursuant

6 to the Board's order.

7 MS. PLOWNICK: I'm going to move to

8 admit MPAA Exhibit 334 into evidence.

9 MR. BOYDSTON: No objection.

10 MR. MacLEAN: No objection.

11 JUDGE BARRETT: 334 is admitted.

12 (Whereupon, the above-referred to

13 document was received into evidence as

14 MPAA Exhibit No. 334.)

15 BY MS. PLOWNICK:

16 Q Now, Ms. Saunders, you testified

17 earlier that MPAA has representation agreements

18 with its claimants. Are you aware that IPG has

19 raised questions about whether MPAA represents

20 certain claimants in connection with these

21 proceedings?

22 A Yes, I am.

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1 Q How did you become aware?

2 A Well, I think that I became first

3 aware in the prior proceeding involving 2000 to

4 2003 cable royalties, and IPG had questioned our

5 entitlement to -- or our representation of

6 certain claimants. And then I have seen several

7 motions and documents filed in this proceeding in

8 which those challenges have been made again, and

9 I most recently saw challenges raised by IPG in

10 their written rebuttal statement.

11 Q When you reviewed IPG's filings, in

12 particular the list of claimants that IPG

13 purports to represent, what, if anything, did you

14 notice?

15 A I noticed that there were several

16 entities mentioned that I was certain, without

17 looking into it even, that -- off the top of my

18 head, that we represented those claimants.

19 Q Let me direct your attention to MPAA

20 Exhibits 311 through 323. And you can start with

21 311. It has been premarked as MPAA Exhibit 311.

22 A Yes. Yes, these are our collection --

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1 or redacted copies of MPAA representation

2 agreements for multiple claimants.

3 Q And since you're flipping through,

4 what has been premarked as MPAA Exhibit 311

5 through 323, are they all MPAA representation

6 agreements?

7 A Yes.

8 Q Are these documents that MPAA

9 maintains as business records?

10 A Yes.

11 Q Did you or someone under your

12 direction retrieve these documents from MPAA's

13 files in connection with discovery in this

14 proceeding?

15 A Yes. My staff and my counsel.

16 Q So please turn specifically to what

17 has been premarked as MPAA Exhibit 311, and look

18 at the last page. What MPAA claimant is this

19 agreement with?

20 A This is with our claimant known as

21 Screenrights, the Audio-Visual Copyright Society

22 of Australia.

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1 Q And is your signature on that page of
2 the document?
3 A It is.
4 MS. PLOWNICK: So I'm going to move to
5 admit MPAA Exhibit 311 into evidence.
6 MR. BOYDSTON: Your Honor, we object
7 because it has been heavily redacted. I also
8 observe redaction should be unnecessary to the
9 extent that this is marked Restricted. We do
10 have a protective order in place. The redaction
11 makes the document not complete, and, frankly, it
12 cannot be completely interpreted in its redacted
13 form. I don't know why it is redacted, since
14 it's -- we have a protective order.
15 JUDGE BARRETT: Mr. MacLean, do you
16 want to weigh in?
17 MR. MACLEAN: Your Honor, I have no
18 objection to this exhibit.
19 JUDGE BARRETT: Ms. Plownick?
20 MS. PLOWNICK: Yes. Your Honor, I
21 would just comment on that briefly to say that
22 IPG moved to compel unredacted copies of these

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1 documents in discovery, and the Judges ruled that
2 MPAA was allowed to redact them and did not have
3 to produce unredacted copies.
4 And so these are the documents that we
5 produced to IPG in discovery in this proceeding,
6 as you can see by the MPAA Bates Stamp Numbers on
7 them. The redactions were -- and we gave them
8 our redaction logs, too, in this proceeding, as
9 we're required by the Judges' orders.
10 JUDGE BARRETT: Is that correct, Mr.
11 Boydston? You received redaction logs?
12 MR. BOYDSTON: Yes. But I'd say the
13 redaction logs were -- did not have -- were
14 essentially devoid of content. I mean, all they
15 said was, "Confidential information." They
16 didn't give any description of it.
17 MS. PLOWNICK: That is inaccurate
18 characterization of our redaction.
19 JUDGE BARRETT: Exhibit 311 is
20 admitted. If it's redacted to the point where we
21 can't derive any valid information from it, that
22 goes to the weight I think rather than to

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1 admissibility.
2 (Whereupon, the above-referred to
3 document was received into evidence as
4 MPAA Exhibit No. 311.)
5 MS. PLOWNICK: Thank you, Your Honor.
6 MR. BOYDSTON: Thank you, Your Honor.
7 BY MS. PLOWNICK:
8 Q Ms. Saunders, looking at MPAA
9 Exhibit 311, is Screenrights an agent or a
10 copyright owner?
11 A Screenrights is an agent.
12 Q And is there -- does Screenrights
13 typically file a joint claim or an individual --
14 A Yes.
15 Q -- claim?
16 A A joint claim.
17 Q Is there a part of the MPAA
18 representation agreement that covers
19 representation of claimants identified in joint
20 claims?
21 A Yes, there is. It's called Provisions
22 Applicable to MPAA-Represented Claimants Acting

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1 as Agents, Copyright Owners Represented by
2 Agents, and Joint Claimants.
3 Q Ms. Saunders, as a lawyer, you know
4 that Court Reporters are magical, but we often
5 read a lot faster than we speak. So could you go
6 through that again?
7 A Absolutely. And I apologize, Your
8 Honor. I have been accused more than once of
9 speaking too quickly. Provisions Applicable to
10 MPAA-Represented Claimants Acting as Agents,
11 Copyright Owners Represented by Agents, and Joint
12 Claimants.
13 Q And, Ms. Saunders, what numbered
14 paragraphs of the -- of MPAA Exhibit 311 are you
15 looking at there?
16 A Numbers 11 through 14.
17 Q And paragraphs 13 through 14 are
18 redacted, but paragraphs 11 and 12, could you
19 read those into the record, please?
20 A Okay. I'm going to go really slowly.
21 I have a lot of sympathy for you at this moment.
22 JUDGE BARRETT: You don't have to go

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1 any more slowly than you would normally speak.
 2 THE WITNESS: Okay.
 3 (Laughter)
 4 Perhaps than you would normally speak.
 5 (Laughter)
 6 Okay. "In addition to the obligation
 7 arising under paragraph 11 above, paragraph 11,
 8 if, for a particular royalty year, claimant filed
 9 a claim with the CRB on behalf of itself and one
 10 or more other parties ("Joint Claim") --
 11 JUDGE BARRETT: Go ahead. You may --
 12 THE WITNESS: Okay. Sorry. I'm
 13 sorry. I'm really nervous about that I'm
 14 speaking --
 15 JUDGE BARRETT: You don't have to
 16 dictate, just read.
 17 THE WITNESS: Sorry. Okay. "This
 18 agreement authorizes MPAA to represent all
 19 parties named in the joint claim."
 20 BY MS. PLOVNIK:
 21 Q All right. I can stop you there, Ms.
 22 Saunders.

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1 A Thank you, Lucy.
 2 Q Okay. Now, Ms. Saunders, please look
 3 at MPAA -- what has been premarked as MPAA
 4 Exhibits 312 through 323.
 5 A Okay.
 6 Q Are all of these documents similar to
 7 MPAA Exhibit 311?
 8 A Yes.
 9 Q And just quickly, for the record,
 10 let's go through and identify them. Turn to MPAA
 11 -- what has been premarked as MPAA Exhibit 312.
 12 Look at the last page. What MPAA claimant is
 13 this agreement with?
 14 A BBC Worldwide of Americas, Inc.
 15 Q Look at what has been premarked as
 16 MPAA Exhibit 313. What MPAA claimant is this
 17 agreement with?
 18 A Canadian Broadcasting Corporation.
 19 Q And turn to MPAA Exhibit -- what has
 20 been premarked as MPAA Exhibit 314. What MPAA
 21 claimant is this agreement with?
 22 A CBS Broadcasting, Inc.

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1 Q And look at what has been premarked as
 2 MPAA Exhibit 315. What MPAA claimant are these
 3 agreements with?
 4 A Compact Collections Limited.
 5 Q Now, look at what has been premarked
 6 as MPAA Exhibit 316. What MPAA claimant are
 7 these agreements with?
 8 A Fintage Publishing and Collection BV.
 9 Q Look at what has been premarked as
 10 MPAA Exhibit 317. What MPAA claimant is this
 11 agreement with?
 12 A Fox Entertainment Group, Inc.
 13 Q Look at what has been premarked as
 14 MPAA Exhibit 318. What MPAA claimant are these
 15 agreements with?
 16 A Bruce Goodman, the Goodman Group.
 17 Q Look at what has been premarked as
 18 MPAA Exhibit 319. Which MPAA claimant is this
 19 agreement with?
 20 A IFTA Collections.
 21 Q Look at what has been premarked as
 22 MPAA Exhibit 320. What MPAA claimant are these

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1 agreements with?
 2 A PGA Tour, Inc.
 3 Q Look at what has been premarked as
 4 MPAA Exhibit 321. What MPAA claimant is this
 5 agreement with?
 6 A Philip R. Hochberg.
 7 Q On behalf of what entity?
 8 A Oh, sorry. Transworld
 9 International/IMG.
 10 Q And look at what has been premarked as
 11 MPAA Exhibit 322. What MPAA claimant is this
 12 agreement with?
 13 A United States Olympic Committee.
 14 Q And look at what has been premarked as
 15 MPAA Exhibit 323. What claimant does this
 16 agreement cover?
 17 A This agreement is signed by Edward S.
 18 Hammerman, and it has attached to it a long list
 19 of claimants.
 20 Q Is Urban Latino TV included?
 21 A Yes.
 22 Q Is LA TV also included?

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1 A Yes. I think it's -- hold on a
2 second. LA TV Networks, Latination also is
3 there.
4 MS. PLOWNICK: At this time, I would
5 move to admit what has been premarked as MPAA
6 Exhibits 312 through 323, inclusive, into
7 evidence.
8 MR. BOYLSTON: Your Honor, I raise the
9 same objection as I did with Exhibit 311. These
10 have all been heavily redacted, including
11 essentially the entire portion that deals with
12 conflicting claims in each of these. For the
13 record, I make the objection on this -- all of
14 these exhibits that -- because they are heavily
15 redacted, despite the existence of a protective
16 order. It renders the documents ambiguous to the
17 point that they should be excluded.
18 MR. MacLEAN: Your Honor, I have no
19 objection to this model of presentation for the
20 representation authority for claimants.
21 JUDGE BARRETT: Exhibits -- I'm sorry.
22 Did we start at 312?

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1 MS. PLOWNICK: It's 312 through 323.
2 JUDGE BARRETT: 312 to 323, inclusive,
3 are admitted, noting IPG's objection.
4 (Whereupon, the above-referred to
5 documents were received into evidence
6 as MPAA Exhibits Nos. 312 through
7 323.)
8 BY MS. PLOWNICK:
9 Q So, Ms. Saunders, are any of the
10 agreements in MPAA Exhibits 311 through 323
11 limited in term?
12 A No, they are not.
13 Q Would you characterize them as
14 perpetual?
15 A They would be perpetual. There is a
16 written notice provision of course. Sorry. A
17 written termination provision, but they are
18 otherwise perpetual.
19 Q Does each of the MPAA representation
20 agreements contain language indicating that MPAA
21 represents all claimants identified in joint
22 claims?

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1 A Yes, it does.
2 Q And that language is included in all
3 of MPAA agreements, not just the few that we see
4 here.
5 A It is standard language in our
6 representation agreements, yes.
7 Q All right. Ms. Saunders, you
8 testified earlier that some of the claimants on
9 IPG's list of represented claimants were
10 represented by MPAA. Did you take any action in
11 response to MPAA -- IPG listing MPAA-represented
12 claimants in its case in this proceeding?
13 A Yes, I did. I directed my counsel to
14 contact those claimants and clarify -- in order
15 to clarify whether they would be represented by
16 IPG or by MPAA in these -- in this proceeding.
17 Q Did your attorneys take any actions
18 based on your directions?
19 A Yes. They contacted those claimants
20 and received a series of affidavits and attached
21 documents in reply.
22 Q Now, let me direct your attention to

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1 MPAA Exhibits 324 through 327. Have you seen
2 these documents before?
3 A I have. These are the affidavits to
4 which I was just referring.
5 Q Now, let's go through and identify
6 each of these documents for the record. Look at
7 what has been premarked as MPAA Exhibit 324.
8 What is this document?
9 A This is --
10 JUDGE BARRETT: Before we launch into
11 this series of exhibits, we're going to take our
12 noon recess. We will reconvene at 1:00. Thank
13 you.
14 (Whereupon, the above-entitled
15 proceedings went off the record at 12:03 p.m.)
16 JUDGE BARRETT: Ms. PLOWNICK, are we
17 continuing with Ms. Saunders?
18 MS. PLOWNICK: Yes, Your Honor. We
19 will be continuing with Ms. Saunders' direct.
20 BY MS. PLOWNICK:
21 Q Now, Ms. Saunders, you were previously
22 testifying before our lunch break, and you're

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1 still under oath, and you understand that.
 2 A Yes, I understand.
 3 Q Okay. Now, when we left off, we were
 4 just -- I had just directed your attention to
 5 MPAA Exhibit -- what has been premarked as MPAA
 6 Exhibits 324 through 332. And I believe you were
 7 beginning to identify those documents. So what
 8 are MPAA Exhibits 324 through 332?

9 A These are affidavits that were
 10 submitted to MPAA to disavow representation by
 11 IPG in these proceedings. And to many of these
 12 are attached documents and other email exchanges
 13 that were not provided to MPAA in discovery.

14 Q So let's just go through and identify
 15 each one of these for the record. So what has
 16 been premarked as MPAA Exhibit 324, what is that
 17 document?

18 A This is an affidavit on behalf of A&E
 19 Television Networks that has been provided to us
 20 by SVP and Deputy General Counsel Nancy Alpert.

21 Q And is A&E currently represented by
 22 MPAA?

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1 A Yes, they are.
 2 Q Turn to what has been premarked as
 3 MPAA Exhibit 325. What is that document?

4 A This is an affidavit from Vernon Chu,
 5 who is the General Counsel of BBC Worldwide
 6 Americas.

7 Q And is BBC Worldwide Americas
 8 currently represented by MPAA?

9 A Yes, they are. I believe they may be
 10 -- no, I'm so sorry. I was going to say they
 11 were represented by an agent, but no -- yes, they
 12 are represented by MPAA.

13 Q Okay. Turn to what has been premarked
 14 as MPAA Exhibit 326. What is that document?

15 A This is an affidavit from Mikhail
 16 Borglund on behalf of -- he is the Managing
 17 Director of Beyond International Limited. And
 18 that entity is represented by MPAA through the
 19 agent Pintage.

20 Q Thank you, Ms. Saunders. Turn to what
 21 has been premarked as MPAA Exhibit 327. What is
 22 that document?

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1 A This is an affidavit from Ron
 2 Devillier. Do you need me to spell that?

3 Q Please spell that.

4 A D-E-V-I, double L, I-E-R. And he is
 5 78 years old and is the President and CEO of
 6 Devillier Donegan Enterprises.

7 Q Is Devillier Donegan currently
 8 represented by MPAA?

9 A No, they are not. They are a claimant
 10 in the PTV category. Their programming is PBS
 11 programming, according to this affidavit.

12 Q So turn to what has been premarked as
 13 MPAA Exhibit 328. What is that document?

14 A That is an -- this is an affidavit
 15 from Diane -- uh-oh -- Eskenazi, E-S-K-E-N-A-Z-I,
 16 who is the President of GoldenFilms Finance
 17 Corporation, doing business as GoldenFilms, and,
 18 oh, my goodness, American Film Investment
 19 Corporation. They are represented by MPAA
 20 through IFTA.

21 Q Turn to MPAA -- what has been
 22 premarked as MPAA Exhibits 329 and 330. And what

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1 are these documents?

2 A These are affidavits submitted,
 3 respectively, by Tim Cook, who is the President
 4 and CEO of Pacific Family Entertainment. Pacific
 5 Family Entertainment is represented by MPAA
 6 through Compact Collections. And that was,
 7 sorry, 329. And Exhibit 330 is an affidavit of
 8 Juan Dominguez, D-O-M-I-N-G-U-E-Z, who is Vice
 9 President of Business Affairs for Pacific. And
 10 he is indicating that they are -- that IPG is not
 11 authorized to represent their interests, that
 12 they are represented by MPAA through Compact.

13 Q Turn to what has been premarked as
 14 MPAA Exhibit 331. And what is that document?

15 A This is an affidavit of Edward Saff,
 16 S-A-F-F, who is the CFO of LATV Networks. And
 17 they are represented by MPAA through Ted
 18 Hammerman.

19 Q Is LATV Networks connected to Urban
 20 Latino TV?

21 A Yes. Doing business as Latino
 22 Alternative Television and having acquired assets

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1 of Urban Latino.

2 Q Now, turn to what has been premarked
3 as MPAA Exhibit 332, and what is that document?

4 A This is an affidavit from Worldwide
5 Pants representative Fred Negro, N-I-G-E-R-O, who
6 is the Secretary of Worldwide Pants.

7 Q And is Worldwide Pants represented by
8 MPAA?

9 A No. They are not. They're the
10 authority to collect cable -- sorry. The
11 authority to collect retransmission royalties in
12 these proceedings is -- has been assigned to CBS.
13 The right, I should say, to collect
14 retransmission royalties has been assigned to CBS
15 Broadcasting. And, yes, CBS Broadcasting is
16 represented by MPAA in these proceedings.

17 Q Ms. Saunders, each of these affidavits
18 which we have been discussing, which are marked
19 as MPAA Exhibits 324 through 332, were they
20 previously filed with the Judges as a part of
21 MPAA's written rebuttal statement?

22 A Yes, they were.

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1 MS. PLOWNICK: All right. I'm going
2 to move to admit MPAA Exhibits 324 through 332,
3 inclusive, into evidence.

4 MR. BOYDSTON: Your Honor, first, just
5 dealing solely with 324, the first one, our
6 objection there is that 324 deals with A&E
7 Broadcasting. That's not the right term -- A&E
8 Television. IPG is making no claim on behalf of
9 A&E in this proceeding, and we made that clear in
10 our paper, so I don't see what the relevance is.
11 We are making no claim for it. There is no
12 reason why we need to address it.

13 JUDGE BARRETT: In any year?

14 MR. BOYDSTON: No. Not in any year in
15 this proceeding, no.

16 MS. PLOWNICK: Your Honor, if I may
17 respond, A&E was included in IPG's claims for
18 1999 through 2005 cable and satellite. A&E was
19 also listed in IPG's petition to participate in
20 this proceeding for both the cable and satellite
21 before they were consolidated.

22 This document also goes to

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1 credibility, and the documents that are attached
2 to the A&E affidavit were never produced in
3 discovery to MPAA either in the last proceeding
4 or in this proceeding. IPG did claim A&E in
5 2002-2003 Phase 2 in their testimony and in all
6 their filings.

7 MR. BOYDSTON: Your Honor, just for
8 clarification, we did not claim A&E in our intent
9 to participate. In the original filings we did,
10 but very carefully. In our intent to participate
11 in these proceedings, we did not include A&E for
12 various reasons, including the fact that they had
13 terminated and we made the decision that we
14 weren't going to pursue anything with them. We
15 believe they breached their contract perhaps, but
16 we are not making any claim for them, and that's
17 why we didn't produce anything in discovery,
18 because we are making no claim for them.

19 MS. PLOWNICK: Your Honor, I have a
20 copy of their original petition to participate
21 that we can pull out if you need to see it. But
22 it does list A&E.

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1 JUDGE BARRETT: Okay. Mr. Boydston,
2 did you amend your petition to participate in any
3 way?

4 MR. BOYDSTON: We don't believe they
5 were in it.

6 JUDGE BARRETT: Okay.

7 MR. BOYDSTON: Lister, we make it --
8 I think we can make clear, we have no claim
9 there. We put it in papers we filed with you.

10 JUDGE BARRETT: Okay. Thank you.

11 MR. BOYDSTON: Our written direct
12 statement says there is no claim for them.

13 JUDGE BARRETT: Thank you.

14 MR. MacLEAN: Your Honor, evidence of
15 IPG's filing of false claims in this proceeding
16 before this Tribunal is relevant. We have no
17 objection to these exhibits.

18 MR. BOYDSTON: There is no evidence
19 this is a false claim. We're not making a claim.

20 JUDGE BARRETT: Okay. I got it.

21 324 will be admitted, with the
22 knowledge that IPG's counsel currently is

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1 representing that they are making no claim on
2 behalf of A&E, and it might be admitted -- I
3 mean, it is admitted for any other purposes, but
4 you're going to have to show what those purposes
5 are, Ms. Plovnick, by more than simply statement
6 of counsel from the podium.

7 MS. PLOVNIK: Understood.

8 MR. BOYSTON: Your Honor, if I may,
9 with regard to the other exhibits that they have
10 moved to admit, we object on the grounds of
11 hearsay with an asterisk. And this is kind of
12 similar to this issue about a sponsoring witness.
13 All parties have in the past, and are in this
14 proceeding, presenting declarations for
15 admission.

16 And in most civil courtrooms, a
17 declaration is competent evidence as long as it
18 is not hearsay or otherwise in support of
19 something like a motion for summary judgment.

20 I think what is needed here is a
21 little clarification and a fair and even playing
22 field. And we have had some declarations that

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1 were not admitted previously in other rounds. I
2 think the other parties have, too. All we're --
3 all I'm saying is, if these get admitted, that
4 ought to be fair for everyone.

5 So I object because it's hearsay. By
6 the same token, I think that we all are seeking
7 to admit declarations that are hearsay, and I
8 would just like a little clarification, if
9 possible, as to what the score is going to be on
10 that ground.

11 MR. MacLEAN: Your Honor, I don't
12 believe we are trying to -- seeking to admit
13 declarations that are hearsay. My position --
14 our position --

15 JUDGE BARRETT: A declaration without
16 a witness present would, by definition, be
17 hearsay, Mr. MacLean.

18 MR. MacLEAN: I agree with that, Your
19 Honor, and that's why we have at least made
20 arrangements to have our witnesses present.

21 JUDGE BARRETT: Okay.

22 MR. MacLEAN: However, the rules allow

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1 discretion to the Judges, and I think the
2 standard simply has to be some witnesses are more
3 critical for cross-examination than others. I
4 think that's a fact. It requires judgment in
5 some cases, which is why we have Judges, and we --
6 the SDC has no objection to these exhibits.

7 MS. PLOVNIK: If I may, regulation --
8 in your regulations, the Judges' regulations,
9 Section 351.10 says specifically that hearsay may
10 be admitted, to the extent deemed appropriate by
11 the Copyright Royalty Judges. So hearsay is
12 permissible under the regulations.

13 These documents are -- contain
14 attachments that were not produced to us in
15 discovery, many of them, you know, but they are
16 people that IPG purports to represent, with the
17 exception of A&E, which they are conceding today.
18 The others are listed in their written direct
19 statement, and even A&E, who is on their petition
20 to participate, which my co-counsel has just
21 given me a copy of -- if you would like to see
22 it.

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1 So we would say that these are almost
2 like, you know -- almost declaration of a party
3 opponent to the extent that IPG is purporting to
4 represent them.

5 JUDGE BARRETT: Thank you. In this
6 proceeding, we will permit these declarations to
7 be admitted. Let me back up and say Exhibit 324
8 is provisionally admitted.

9 (Whereupon, the above-referred to
10 document was provisionally received
11 into evidence as MPAA Exhibit
12 No. 324.)

13 And, Ms. Plovnick, if you have some
14 other supporting documentation that you want to
15 offer to establish the other purposes for which
16 the A&E declaration might be admitted, I will --
17 we will take a look at that at that point.

18 Exhibits 325 through 333 are admitted.
19 (Whereupon, the above-referred to
20 documents were received into evidence
21 as MPAA Exhibits Nos. 325 through
22 333.)

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1 And, once again, we see, counsel, why
2 we need a regulatory overhaul.
3 MR. BOYDSTON: Your Honor, I think it
4 was -- that they moved for -- through 352, not
5 353.
6 JUDGE BARRETT: Oh, I beg your pardon.
7 You're right.
8 MS. PLOWNICK: 353 is already
9 admitted.
10 JUDGE BARRETT: 353 was already
11 admitted, so --
12 MR. BOYDSTON: Right.
13 JUDGE BARRETT: Thank you.
14 MS. PLOWNICK: So, Your Honor, I --
15 JUDGE BARRETT: We don't have our
16 record in front of us. So if you have something
17 from the record that you would like to --
18 MS. PLOWNICK: I do, Your Honor, and
19 I'm just trying to figure out what number I
20 should -- it was -- this document that I'm going
21 to -- is a copy of IPG's petition to participate
22 in Phase 2 proceedings, Docket Number 2012-07 CRB

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1 SD 1999 through 2009. And I think that MPAA's --
2 the last number we already premarked was 352, so
3 I will mark this as MPAA Exhibit 353 for
4 identification purposes.
5 (Whereupon, the above-referred to
6 document was marked as MPAA Exhibit
7 No. 353 for identification.)
8 And I guess, may I approach the
9 witness?
10 JUDGE BARRETT: You may.
11 BY MS. PLOWNICK:
12 Q Ms. Saunders, what is MPAA Exhibit
13 353?
14 A This is the IPG's petition to
15 participate in Phase 2 proceedings. I believe it
16 is limited to distribution of satellite royalty
17 funds, distribution of 1999 through 2009
18 satellite royalty funds.
19 Q Could you please flip to the attached
20 exhibit?
21 A There is an Exhibit A attached, and
22 Item Number 3 on IPG's petition to participate,

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1 Exhibit A, is A&E Television Network.
2 Q Thank you, Ms. Saunders.
3 And I would move to admit MPAA Exhibit
4 353 into evidence.
5 MR. BOYDSTON: No objection, and we
6 may have been wrong. We thought it wasn't in
7 there, but we weren't sure.
8 JUDGE BARRETT: Exhibit 353 is
9 admitted.
10 (Whereupon, the above-referred to
11 document was received into evidence as
12 MPAA Exhibit No. 353.)
13 MS. PLOWNICK: Okay. So I have no
14 further questions for this witness at this time.
15 JUDGE BARRETT: Thank you.
16 Mr. Boydston?
17 MR. BOYDSTON: Thank you, Your Honor.
18 MR. MacLEAN: Your Honor, I apologize.
19 My colleagues and I were having a little bit of a
20 debate over lunch that I'm hoping you can help
21 resolve.
22 JUDGE BARRETT: Possibly.

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1 MR. MacLEAN: When we are recording
2 time -- sorry to revisit this issue -- it's our
3 understanding that during a direct examination
4 everything that occurs during the direct
5 examination is charged against the party
6 conducting direct examination, but during cross-
7 examination everything that occurs during the
8 cross-examination is charged against the party
9 conducting the cross-examination. Is that
10 accurate?
11 JUDGE BARRETT: That's the way we're
12 recording it, yes.
13 MR. MacLEAN: Thank you, Your Honor.
14 You just won me an --
15 (Laughter)
16 JUDGE BARRETT: Happy to do that. You
17 can pay me later.
18 MS. PLOWNICK: Your Honor, while
19 counsel for TPE is approaching, may I get a
20 clarification as to whether you -- Exhibit 324,
21 which was provisionally admitted, I would move
22 that it be admitted in full at this time.

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1 JUDGE BARRETT: Yes. Thank you. 324
 2 is admitted in full.
 3 (Whereupon, the above-referred to
 4 document was received into evidence as
 5 MPAA Exhibit No. 324.)
 6 MS. PLOVNICK: Thank you, Your Honor.
 7 THE WITNESS: May I ask a question?
 8 What I do with 353?
 9 JUDGE BARRETT: Just leave it there.
 10 The Court will take care of that at the end of
 11 the day.
 12 Mr. Boydston?
 13 MR. BOYDSTON: Thank you, Your Honor.
 14 CROSS-EXAMINATION
 15 BY MR. BOYDSTON:
 16 Q Ms. Sanders --
 17 MS. PLOVNICK: Saunders.
 18 MR. BOYDSTON: Saunders, thank you.
 19 BY MR. BOYDSTON:
 20 Q What is your position with the
 21 Canadian Copyright Collective?
 22 A I am the supervisor for the Executive

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1 Director.
 2 Q And what generally do you do in that
 3 capacity?
 4 A I supervise her execution of her daily
 5 duties.
 6 Q "Her" being?
 7 A The Executive Director of the
 8 Copyright Collective of Canada, otherwise known
 9 as CCC, whose name is Lucy Medeiros.
 10 Q And so does -- do you make decisions
 11 or do you oversee decisions that she makes?
 12 A I oversee decisions that she makes.
 13 I also collaborate on distribution rules and
 14 other process rules.
 15 Q And where is the MPAA -- where is the
 16 MPAA's principal place of business?
 17 A It is -- well, we have two, but our
 18 principal place of business is in Sherman Oaks,
 19 California. The office where I work is in
 20 Washington, D.C.
 21 Q Do you also work in Sherman Oaks then,
 22 or no?

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1 A No. Although I do like to go there;
 2 the weather is great.
 3 Q Do you work in Canada in connection
 4 with your duties with the CCC?
 5 A No. I travel to Toronto, but I do not
 6 work in Toronto.
 7 Q So is it fair to say that from --
 8 well, actually, where do you work? I think I
 9 know, but --
 10 A Well, as I mentioned earlier, I travel
 11 around the world dealing with CMOs all over the
 12 place. So I work several weeks a year in Europe,
 13 sometimes in Geneva, sometimes in the MPAA office
 14 in Brussels, sometimes in other countries. I
 15 work in Toronto when I am there. I work in
 16 Sherman Oaks when I am there. And I work in
 17 Washington when I'm here. And I also work from
 18 my home location in Keswick, Virginia.
 19 Q Understood.
 20 A I work all the time, as near as I can
 21 tell.
 22 Q I'd ask you to take a look at

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1 Exhibit 309, and it's your direct testimony with
 2 regard to cable issues, I guess I'd put it. And
 3 Appendix A thereto is a list -- I think you
 4 testified a list of MPAA-represented claimants.
 5 That's what it is titled, correct?
 6 A Yes.
 7 Q And then Exhibit B is a list of
 8 claimed works, i.e. programs, television
 9 programs, or things put on television, correct?
 10 A Specifically, claimed -- sorry, works
 11 claimed by our claimants to which certifications
 12 have been given to MPAA.
 13 Q Okay. And so for a given year, when
 14 MPAA wanted to make appropriate filings with the
 15 Copyright Office for copyrights -- copyright
 16 royalties like these, I think your testimony was
 17 that up through 2010 that duly was performed by
 18 Marsha Kessler, correct?
 19 A So to correct you, the MPAA does not
 20 file claims with the Copyright Office. When our
 21 claimants file claims, they provide as-filed copy
 22 claims to the MPAA and, yes, until her retirement

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1 in 2010, those certification documents were sent
2 to Marsha Kessler. Yes.

3 Q And Marsha Kessler sent documents --
4 sent certification documentation out to the
5 claimants, correct?

6 A Yes.

7 Q And so what she was doing in doing
8 that job, she would be taking the programs that
9 are in Appendix B and connecting them up with
10 claimants in Appendix A, correct?

11 A Well, I just want to be very precise
12 because I understand that's important when we are
13 having these little conversations. And the list
14 was Ms. Kessler would have sent to our claimants
15 would -- it would not be this whole list to all
16 of those claimants. It would be lists that were
17 geared towards specific claimants, sent to those
18 claimants, and in fact the -- all of the programs
19 on those lists would not necessarily in every
20 royalty year be reflected in this exhibit or
21 these exhibits, because Exhibit B is effectively
22 the same kind of exhibit in each cable and

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1 satellite matter.

2 The claimants that we represent often
3 -- often line out programs that they are not
4 entitled to claim, and, therefore, do not
5 certify.

6 Q Understood. And could I ask you to
7 take a look at what has been marked as -- I don't
8 think it has been entered yet, but it's there in
9 one of the binders before you -- Exhibit 336.

10 A Okay.

11 Q I believe that's the kind of document
12 you were just describing.

13 A Yes. This is a satellite -- calendar
14 year 2000 satellite retransmission royalty
15 certification.

16 Q And it's kind of like a cover letter.
17 It says Certification on the first page, and it's
18 got a place for a signature for the relevant
19 people to sign, and then on the following pages
20 it has lists of programs, correct?

21 A Yes.

22 Q Now, these programs would have come

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1 from a list like Appendix B, right? Appendix B
2 to Exhibit 309 that we were looking at before in
3 the other binder probably.

4 A I do not know if they would have come
5 from a list like Exhibit B. In other words, did
6 it resemble Exhibit B or not? It would have been
7 a list that we received of titles that we
8 received or that Marsha received from our outside
9 vendor that would indicate the list of
10 programming attributable to this claimant, which
11 is ABC Family Worldwide, otherwise known as Fox
12 Family Worldwide.

13 Q Okay. And the outside vendor is what
14 I want to explore, but let me put this all in
15 context. Let's go back to Exhibit 309,
16 Appendix B, which is the list of works. And for
17 -- the first grouping is for 2004 cable. My
18 understanding is that what Marsha Kessler would
19 do is she would go through the -- let's just talk
20 about 2004 for now. She would go through the
21 first page of Appendix B, and the following
22 pages, that list all of the works of 2004 cable.

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1 And then --

2 MS. PLOWNICK: Objection. Oh, I'm
3 sorry. You've got to finish your question.

4 BY MR. BOYDSTON:

5 Q And then what she would do is she
6 would, from that list, pair up those -- match up
7 those programs with particular claimants and send
8 them a communication -- a certification document
9 like Exhibit 336 that they would then send back,
10 correct?

11 A No, that is not correct.

12 MS. PLOWNICK: I was -- I wanted to
13 object. Ms. Saunders testified that she began
14 supervising Ms. Kessler I think in 2007.

15 THE WITNESS: Correct.

16 MS. PLOWNICK: And this is from 2000,
17 and so I just want to object that he is asking to
18 the extent -- and if Ms. Saunders knows the
19 answer, she knows the answer. But to the extent
20 he is asking her about anything that is outside
21 her personal knowledge, I would object.

22 MR. BOYDSTON: I'll use a different

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1 example.

2 JUDGE BARRETT: Sustained.

3 BY MR. BOYDSTON:

4 Q One that is within -- take a look at
5 -- let's use Exhibit 338, which the first pages
6 deal with a certification of entitlement to the
7 year 2007. But just to make sure, page into it
8 about five pages or so and you'll see a
9 certification of entitlement for calendar year
10 2008, which I think would clearly have been your
11 time period, correct?

12 A I believe so. I actually do not
13 recall which specific royalty years I -- Marsha
14 addressed while I was her supervisor at this
15 moment in time, but I'm going to go out on a limb
16 and say that Marsha's process, given that she did
17 it for almost 30 years, was consistent throughout
18 her time at MPAA.

19 Q Okay. And this certification of
20 entitlement for calendar year 2008 as to the
21 first page, on the second page lists a number of
22 programs, correct?

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1 A I'm sorry. The certification -- the
2 cover page is the certification of entitlement,
3 which you actually -- I'm sorry to say this, Mr.
4 Boydston, inaccurately described as a cover
5 letter. It is in fact a sworn declaration or a
6 written declaration, and then attached to that
7 is, yes, in the Exhibit 338, it's a list of
8 titles that were sent to -- oh, this is to
9 Screenrights from Australia, which they have
10 lined various titles as not being claimable by
11 them.

12 Q And what is your understanding as to
13 how Ms. Kessler would come up with the list that
14 appears on the second page of this?

15 A My understanding is that Ms. Kessler
16 in no way came up with the list, as you said. My
17 understanding is that an outside vendor came up
18 with the list, sent the list to Ms. Kessler per
19 claimant per royalty year. She would then to
20 that list attach the certification of entitlement
21 and ask the claimant to certify as to which of
22 the titles, and in what capacity, they were

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1 claiming as well as the fact that they had to
2 certify that they had filed a valid claim with
3 the Copyright Office.

4 Q Who is the third party vendor?

5 A In some of the years -- up until
6 royalty year 2009, Alan Whitt of IT Processing,
7 and in 2009 we used an accounting firm by the
8 name of Resnick.

9 Q And what were they asked to do?
10 Obviously, they were asked to come up with this --
11 -- a list like this one. But broader than that,
12 what were they asked to do? Were they given a
13 list of works like what we see in Appendix B of
14 309?

15 A No. They would take data that
16 described on a day-to-day basis over a 365-day
17 period all of the programming that was broadcast
18 during that year and make adjustments to rule out
19 wholesale programming that was not in the MPAA
20 repertoire, for lack of a better word. So, for
21 example, devotional programming would be ruled
22 out. And that is how they would generate this

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1 list.

2 Q And then, but --

3 A Or these lists.

4 Q -- these -- and was these lists -- so,
5 in addition to what you just described, they
6 would then go through some sort of a process to
7 divide all the works up and pair them up with
8 individual claimants?

9 A Correct.

10 Q And then they would provide Marsha
11 Kessler or someone at MPAA with all of those
12 separate lists to send with the certification
13 documents, correct?

14 A Yes.

15 Q And in doing so -- well, actually, do
16 you know how they did that? I assume they did
17 that by pulling information and making up a
18 database and then producing it.

19 A I do not know how they did that,
20 actually.

21 Q Do you know how the information was
22 transmitted to the MPAA? Was it just a series of

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1 stacked papers or --
 2 A You will be surprised to know that in
 3 the earlier years, yes. And by that I mean
 4 twenty years up until quite recently, yes, there
 5 were enormous -- enormous stacks of paper. And
 6 subsequently, when we finally were able to move
 7 away from the paper a little bit, we would
 8 receive Excel files, or Marsha would receive
 9 Excel files.

10 Q Is it not true that Mr. Whitt's entity
 11 had this information electronically, printed it
 12 out and delivered to MPAA in a paper format? Is
 13 that correct?

14 A I know that Mr. Whitt tendered
 15 voluminous paper records to us. I have never
 16 been to Mr. Whitt's office, and I do not know how
 17 he prepared that data. And he is no longer an
 18 MPAA consultant.

19 Q Do you know whether or not you or
 20 anyone else on the MPAA -- on behalf of MPAA ever
 21 made a request of Mr. Whitt for the working files
 22 that his company had to perform these processes?

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1 A Yes, we did. When we terminated his
 2 services, he tendered us his -- I believe it was
 3 his hard drive, and that hard drive was tendered
 4 to counsel in preparation for the prior
 5 proceedings, and they obviously had it --
 6 retained it for this one.

7 Q Are you familiar with what was on the
 8 hard drive?

9 A Oh, goodness no. I am not the cyber
 10 judge.

11 Q Understand that. Let me ask you to
 12 take a look at Exhibit 334. And you testified
 13 earlier that this was an exemplar of what was
 14 provided to IPG at the request of the Judges,
 15 correct?

16 A Yes.

17 Q Okay. Now, it's two columns, one
 18 entitled Owner (Agent), and then Title, and tell
 19 me what your -- and this may be obvious, but for
 20 the record tell me what your understanding is of
 21 what the two columns represent.

22 A The claimant name --

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1 MS. PLOWNICK: Objection. I wanted to
 2 make sure that he is not asking Ms. Saunders to
 3 answer about things that are beyond her personal
 4 knowledge.

5 MR. BOYDSTON: Only her personal
 6 knowledge. Only what her understanding is.

7 THE WITNESS: Well, when I read it, I
 8 see the words Owner (Agent) and Title. And given
 9 that I instructed my counsel to prepare an
 10 electronic copy, if you will, of information on
 11 our certification reports, I'm going to go out on
 12 a limb again and say this is an excerpt of that.
 13 But we also produced paper copies of all of the
 14 certifications for all of the programs we are
 15 claiming in this proceeding. And this document
 16 will not, by definition, have very valuable
 17 annotations such as you see in the Screenrights
 18 exhibit we were just looking at where titles are
 19 lined out.

20 BY MR. BOYDSTON:

21 Q Right. With regard to -- let me, see,
 22 one, two, three, four, five -- no, six -- well,

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1 if you take at the far left, there is a number
 2 and it corresponds with the line. Unfortunately,
 3 the first number is -- number 1 is Owner, so the
 4 fifth actual entity --

5 A I see.

6 Q -- is number 6.

7 A Sure.

8 Q But looking at what is labeled
 9 number 6, the fifth one down, it says ABC Family
 10 Worldwide is the owner, and the property is
 11 Angela Anaconda. Are you aware that Angela
 12 Anaconda is actually owned by Decode
 13 Entertainment?

14 A I am not aware of that.

15 Q Did you ever -- are you aware as to
 16 whether or not the MPAA, either through counsel
 17 or not through counsel, as far as you know, ever
 18 obtained a declaration from ABC Family Worldwide,
 19 Inc. as to whether or not it owned these
 20 particular properties?

21 MS. PLOWNICK: Objection. He's
 22 calling for speculation here, Your Honor.

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1 MR. BOYDSTON: I'm asking if she
2 knows. She -- maybe she authorized, maybe she
3 said, maybe she didn't. I'm only asking what she
4 knows and nothing further.

5 JUDGE BARRETT: She can -- it's a yes
6 or no. Did you know?

7 THE WITNESS: If the title is in this
8 abstract that was sent to you, then, yes, it
9 would have been certified by that claimant, ABC
10 Family.

11 MR. BOYDSTON: Okay.

12 THE WITNESS: Whether they actually
13 own it or not, I don't know, but they certified
14 to it.

15 BY MR. BOYDSTON:

16 Q Now, with regard -- going down two
17 more to line 8, it refers to Beast Wars being
18 owned by ABC Family Worldwide. Are you aware
19 that Beast Wars is owned by Mainframe
20 Entertainment and Mainframe Entertainment has a
21 contract with IPG? Do you have any familiarity
22 with that?

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1 A No, I do not.

2 MS. PLOVNICK: I object, Your Honor.
3 This calls for her to speculate and --

4 JUDGE BARRETT: He is just asking if
5 she knows this -- he is trying to get in his own
6 evidence through some kind of negative pregnant --
7 the objection is overruled. But, you know, if
8 you have a different objection, we'll --

9 MS. PLOVNICK: Well, I also object
10 that he is going through documents that -- I
11 mean, I understand that you have admitted
12 Exhibits 333 and 334, but there are many other
13 documents that haven't yet been admitted that are
14 in the nature of MPAA's response to IPG's
15 rebuttal, which they haven't even put on yet.
16 And, you know, I -- we have not yet put on that
17 evidence, but some of this is going to be made
18 very clear when that evidence is put on, I would
19 think, so --

20 JUDGE BARRETT: God willing. Mr.
21 MacLenn?

22 MA. MACLEAN: Your Honor, I object to

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1 Mr. Boydston's last question on grounds of lack
2 of foundation and facts not in evidence.

3 JUDGE BARRETT: Sustained.

4 BY MR. BOYDSTON:

5 Q Let's look back at -- I beg your
6 pardon. Just give me a second. Let's change
7 gears a little bit. Let's go back to Exhibit --
8 let's go to Exhibit 311. And this is the
9 representation agreement with Screenrights, I
10 believe, correct?

11 A Yes.

12 Q Now, with regard to -- go to page 2,
13 and specifically I'm curious about paragraphs 8
14 and 9. And, well, in general, are you familiar
15 with these representation agreements?

16 A I am.

17 Q And is it fair to say, then, that you
18 are familiar with paragraphs 8 and 9?

19 A Yes.

20 Q Now, that provides a right --
21 contractual right for the MPAA to essentially go
22 to the agent, in this case Screenrights, and ask

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1 that Screenrights provide some sort of

2 verification or documentation of who they have
3 assignments from, correct?

4 A Upon request.

5 Q Right.

6 A On an as-needed basis. And I believe
7 it's in our sole discretion.

8 Q Fair enough. Do you recall whether or
9 not, or do you know whether or not, the MPAA ever
10 exercised that right with regard to Screenrights?

11 A With regard to Screenrights, we do
12 have an affidavit that I believe that -- or a
13 letter, excuse me, from Screenrights to me that I
14 believe will be discussed in later testimony. I
15 don't know that it has been admitted yet, and I
16 haven't talked about it, so in response to
17 allegations raised by IPG about their capacity
18 claim, we did confer with them.

19 However, Screenrights is known to me
20 not only as a validly constituted CMO under the
21 laws of Australia; they also serve with me on the
22 General -- in the General Assembly of AGICOA.

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1 And I should point out that paragraphs 8 and 9 in
2 fact, you may be dismayed to know, were actually
3 included in our representation agreement,
4 specifically for claimants like IPG, where in the
5 instance that we felt there was some dubiousness
6 to the claimant's claim, we had the right to seek
7 substantiation.

8 Q Has the MPAA done that as far as you
9 know with anybody?

10 A With anybody?

11 Q Yes.

12 A Other than IPG?

13 Q Yes.

14 A No.

15 Q Never?

16 A I can't -- I don't know the answer to
17 that. I did not micromanage every action that
18 Marsha took in the many years that she did this
19 job.

20 Q So none that you're aware of. As far
21 as you know -- well, I guess let's -- let me just
22 back up.

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1 A That would not be accurate to say.

2 Q When I first asked I said never --

3 A I have personally never done it. I
4 have personally never done it. And the only
5 instance I'm aware of is Marsha's -- Ms.
6 Kessler's investigation into IPG's claims.

7 Q Thank you. On the following page,
8 paragraph 10, paragraph 10 states, "This
9 agreement exists in perpetuity. However, either
10 claimant or MPAA may terminate this agreement
11 upon expiration of a written 30-day advance
12 notice." Are you familiar with this provision?

13 A Yes.

14 Q And then it continues to say, "Such
15 notice shall terminate MPAA representation only
16 as to royalty years for which the CRE has not yet
17 docketed a Phase I distribution proceeding at the
18 time the notice is received by the MPAA." Has
19 the MPAA received notices terminating
20 representation agreements like this as far as you
21 know?

22 A To my knowledge, we have never

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1 received a notice terminating our representation.

2 Q Is it your understanding -- and I'm
3 not asking for a legal opinion, although you are
4 a lawyer, I'm not -- you're not here as a lawyer
5 -- is it your understanding that this provision
6 means that if someone does terminate with the
7 MPAA, the MPAA still has the right to go ahead
8 and prosecute rights on proceedings that have
9 been docketed in the Phase I distribution?

10 MS. PLOWNICK: I'm going to object
11 that this does in fact call for a legal
12 conclusion.

13 MR. BOYDSTON: I'm just asking her
14 understanding of the phrase, just like I would
15 any contractual party in litigation.

16 JUDGE BARRETT: Sustained.

17 MR. BOYDSTON: Sustained?

18 JUDGE BARRETT: Is not answer.

19 THE WITNESS: Oh. Thank you.

20 BY MR. BOYDSTON:

21 Q Let me ask you to go back -- let's
22 take a look at Exhibit 330. Now, 330 there are -

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1 - again, the first page is for calendar year
2 2007, and then it goes on, the next year, the
3 next year, the next year. And looking at the
4 first year, 2007, I'm looking at the third page
5 of that document which is Bates Stamp 08173, and
6 there is a bunch of -- it's a chart. It says
7 Owner, then Title, other items. And a number of
8 these things are crossed out. Do you see that?

9 A Yes.

10 Q And I'm assuming, but I'm asking you,
11 what is the significance of receiving something
12 like this with it crossed out?

13 A That the claimant does not claim that
14 particular title.

15 Q And looking at the third page, the one
16 I originally directed everyone to, the third item
17 down lists the owner as Audio-Visual Copyright
18 Society Limited, trading as Screenrights. And
19 the title is Outdoorsman with Buck McCreary, and
20 they are crossed out, correct?

21 A Yes, that's correct.

22 Q And so I take it from your testimony

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1 so far this document was sent by the MPAA to
2 Screenrights, Screenrights reviewed these items,
3 crossed out ones where Screenrights did not have
4 the rights, correct?

5 A Where their claimants, those that they
6 represented, did not have the rights, yes.

7 Q Thank you. Thank you for the
8 clarification. Now, accordingly, if we go back
9 over to Exhibit 309, and we look at Appendix B,
10 and we page to where the 2007 cable list is,
11 which I see it's -- well, at least the midst of
12 it is in page 166 to 167. This is a list of all
13 claims -- excuse me, all claimed programs where
14 the MPAA claimants, agents, et cetera, came back
15 and said, "These are our programs." So, in other
16 words, this won't contain anything that's crossed
17 out, correct?

18 A Yes.

19 JUDGE BARRETT: Mr. Boydston, I'm
20 sorry, are you looking at 309 or 310?

21 MR. BOYDSTON: I apologize, Your
22 Honor. It's 309.

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1 JUDGE BARRETT: Okay.

2 MR. BOYDSTON: They are very similar.
3 One is cable, I think.

4 JUDGE BARRETT: I understand. That's
5 why I asked. And we're looking at page 167 --

6 MR. BOYDSTON: Yes.

7 JUDGE BARRETT: -- of Appendix B?

8 MR. BOYDSTON: Right. And, actually,
9 I'm about to move from there because I'm looking
10 for where the Outdoorsman with Buck McNeely would
11 appear if it were in here, and I believe if it
12 were in here it would appear on 164, because
13 that's where the O-U, et cetera, titles are.

14 BY MR. BOYDSTON:

15 Q Do you see 164, Ms. Saunders?

16 A I do see 164.

17 Q And Outdoorsman with Buck McNeely
18 doesn't appear in there, which is correct, since
19 it was crossed out, correct?

20 A Yes.

21 Q Okay. Now, let me ask you -- let's
22 just stay on this 309 for the moment. And

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1 page 255 of 309 -- or 309B --

2 A I'm sorry. 255?

3 Q Yes. And on 255, in the first column
4 on the left, about three-quarters of the way
5 down, I see Outdoorsman with Buck McNeely. Do
6 you see that as well?

7 A I do see that.

8 Q Okay. So since it's in there,
9 presumably it would be in one of these
10 certifications, correct?

11 A It should be. However, I believe --
12 well, it should be.

13 Q Right. And I won't hide the ball
14 anymore -- I don't think it is -- but let's just
15 take a look. If we go back to Exhibit 336, and
16 you page to the certificate of entitlement for
17 the year 2009, and then you look down the list --

18 MS. PLOWNICK: It's on the last page,
19 MPAA-S-09 --

20 MR. BOYDSTON: What page number did
21 you just --

22 MS. PLOWNICK: On Bates Stamp Number

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1 MPAA-S-0922.

2 BY MR. BOYDSTON:

3 Q If I'm not mistaken, that's one a
4 year, isn't it?

5 MR. MacLEAN: I'm sorry. I'm still
6 looking for it over here. What exhibit are we
7 on?

8 MR. BOYDSTON: 338, right?

9 MS. PLOWNICK: Yes. And it's 338;
10 it's for 2009.

11 JUDGE STRICKLER: And what's the Bates
12 Number again?

13 MS. PLOWNICK: It's Bates Number MPAA-
14 S-0922, and there may be a third 2. I have a

15 hole punch there, so it's hard for me to --

16 JUDGE STRICKLER: There probably is a
17 third 2.

18 THE WITNESS: The Outdoorsman with
19 Buck McNeely. Yes. Yes, it is there.

20 JUDGE BARRETT: So that would be 221,
21 because the next one is --

22 MS. PLOWNICK: Oh. So maybe it is 22

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1 I'm sorry. I have a hole punch on my copy.
 2 JUDGE BARRETT: Sorry. 223. Judge
 3 Strickler correct me.
 4 BY MR. ROYDSTON:
 5 Q So it appears for calendar year 2009
 6 there are two certificate of entitlements, one
 7 that begins on 9218, and one that begins on 9221,
 8 correct?
 9 A Okay. Now you've lost me. I was
 10 ready to go with the title, but now you've thrown
 11 me -- I'm sorry. You're asking me if there are
 12 two certifications for Screenrights?
 13 Q Well, yes. And I'm going to refer to
 14 the MPAA's Bates Stamp Numbers. If you'll look
 15 at 9218 --
 16 A Okay.
 17 Q -- the certification of entitlement,
 18 calendar year 2009 --
 19 MR. MACLEAN: Objection.
 20 JUDGE BARRETT: Oh, what is the -- I
 21 can't sustain it until I hear it.
 22 MR. MACLEAN: Your Honor, I object to

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1 the witness being questioned about a document
 2 that is not in evidence.
 3 MR. BOYDSTON: They have listed it as
 4 one of the documents they intend to put in
 5 evidence. I'm not asking to admit it now. And
 6 at this point, I'm just trying to clear one thing
 7 up and then I'm going to be done.
 8 JUDGE BARRETT: Do I understand that
 9 they have no objection to this being admitted?
 10 If so, do you want --
 11 MR. BOYDSTON: No. We have no
 12 objection to this being admitted.
 13 JUDGE BARRETT: Okay. 338 is
 14 admitted.
 15 (Whereupon, the above-referred to
 16 document was received into evidence as
 17 MPAA Exhibit No. 338.)
 18 BY MR. BOYDSTON:
 19 Q Now, the only thing I have left on
 20 this is just trying -- it appears there's two of
 21 those, and I just wanted to ask how come.
 22 A Two of what? Certifications?

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1 Q Yes. There's -- starting at 9218,
 2 it's -- there's a certification of entitlement,
 3 calendar year 2009, and the signatory is Audio-
 4 Visual Copyright Society Limited trading as
 5 Screenrights. Then, if you page forward three
 6 pages, it's -- at 9221 --
 7 A Right.
 8 Q -- there is another one. It's a
 9 different date. The first one is dated 6/8/2012;
 10 the second one is 2/10/2012, also with
 11 Screenrights. I wonder why there's two?
 12 A I do not know. It could simply be a
 13 photocopying error. I have no idea.
 14 Q Well, they're different dates, so I
 15 think they're probably different documents.
 16 A All right.
 17 Q One has Buck McNeely, and one doesn't,
 18 so --
 19 A I do not know.
 20 Q Okay. Fair enough. Turning back to
 21 311, and going to page 3 of 4, towards the bottom
 22 there is a bold item that says Provisions Related

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1 to Conflicting Claims." And everything is
 2 redacted except the very first phrase, "If a
 3 dispute arises between MPAA-represented parties,"
 4 and then it doesn't say anything else. Can you
 5 tell us generally what that provided for and why
 6 it was redacted?
 7 MS. PLOWNICK: Objection. Your Honor,
 8 this was redacted by counsel, and he is asking
 9 her to testify to the contents. We gave him a
 10 redaction log. If he had wanted to bring a
 11 motion for more information in terms of trouble
 12 with the redactions, he could have done that. He
 13 never did it.
 14 JUDGE BARRETT: Sustained.
 15 BY MR. BOYDSTON:
 16 Q Going back to the provisions 3 and 9
 17 on the previous page giving the authority to MPAA
 18 to examine its agents to obtain information about
 19 the specifics of their -- the parties they claim
 20 to represent, you've said that that's -- as far
 21 as you know, that has never been done except with
 22 regard to IDG. What circumstances -- under what

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1 circumstances would the MPAA make such an
2 investigation?

3 MR. MacLEAN: Objection. Move to
4 strike the mischaracterization of a witness'
5 prior testimony.

6 JUDGE BARRETT: Sustained.

7 BY MR. BOYDSTON:

8 Q Under what circumstances would the
9 MPAA exercise those rights?

10 A If we had reason to suspect that a
11 claimant was making a claim that was false. And
12 by that I do not mean a simple error, I mean an
13 intentionally false act of fraud.

14 Q And that has never come up, as far as
15 you know? As far as you know.

16 A Other than with IPG, as far as I know,
17 that is correct. Oh, I take that back. There's
18 one other claimant. I forgot. I apologize. But
19 I can't remember the claimant's name. I know
20 that there is one other claimant that has
21 attempted to be represented by MPAA that we have
22 turned down representation of, because we felt

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1 that the company had dubious -- we couldn't
2 verify that it was a legitimate entity.

3 Q So you didn't enter into an agreement
4 with them.

5 A Oh, no.

6 Q So you never got to the point of
7 investigating.

8 A No. Sorry, you're right. I shouldn't
9 have -- you're right. That was a bad example. I
10 was straining to try to give you some more
11 information.

12 Q I appreciate the straining. Let me
13 ask you to take a look at Exhibit 336, and this
14 is a certification sent to ABC Family Worldwide
15 it appears at the bottom. And on the second page
16 there is -- towards the bottom, the second half
17 of the page, there is a -- one program crossed
18 out called Beast Machines. And then beneath that
19 is Beast Wars. Do you have any familiarity with
20 these programs?

21 A I do not.

22 MS. PLOWNICK: I was going to object

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1 that this is not in evidence yet, but if you
2 would like us to move in, we --

3 MR. BOYDSTON: I assume it's coming in
4 eventually, and I just wanted to ask a question.

5 JUDGE BARRETT: Well, let's make sure
6 it is before we get --

7 MR. BOYDSTON: Well, I can ask a
8 question even if it's not admitted.

9 MS. PLOWNICK: Well, we intend to
10 offer it as a part of our rebuttal to IPG. You
11 know --

12 MR. BOYDSTON: I tell you what, I'll
13 withdraw the question. And if they admit it and
14 I feel like I need to ask the question, I'll ask
15 the question. Question withdrawn.

16 JUDGE BARRETT: Thank you.

17 BY MR. BOYDSTON:

18 Q Do you review -- sorry. Looking at
19 the certification we did admit, which I believe
20 is 336, do you, as a matter of course, review
21 these certifications?

22 A I personally do not, no.

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1 Q Okay. And at one time I presume that
2 was Marsha Kessler's duty?

3 A Correct.

4 Q And whose duty is it now?

5 A That duty falls to our new manager for
6 royalty distribution, whose name is Andre
7 Domicic, D-U-M-I-C-I-C.

8 MR. BOYDSTON: Your Honor, I think I
9 am finished. Can I just have one moment to
10 confer with my client?

11 JUDGE BARRETT: You certainly may.

12 MR. BOYDSTON: Thank you.

13 (Pause)

14 Your Honor, we have an email we'd like
15 to admit as IPG's -- well, first, we'd like to
16 introduce it as IPG's Exhibit 124, next in order.
17 It's an exhibit we intend to ask be admitted as
18 rebuttal.

19 (Whereupon, the above-referred to
20 document was marked as IPG Exhibit No.
21 124 for identification.)

22 MS. PLOWNICK: Your Honor, was this --

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1 I don't know if I've seen a copy of this yet. I
 2 don't -- was it in the exhibit binder?
 3 MR. BOYDSTON: No, it's not. And
 4 we're bringing it in on rebuttal for impeachment.
 5 I will certainly give you a copy.
 6 JUDGE BARRETT: Can you give it to the
 7 Clerk?
 8 MR. BOYDSTON: Yes.
 9 JUDGE BARRETT: Thank you.
 10 MS. PLOVNIK: Your Honor, I'm going
 11 to object to this. Well, I guess he hasn't
 12 offered it yet. Do you want to --
 13 JUDGE BARRETT: You can just hang on.
 14 He hasn't offered it yet.
 15 MR. BOYDSTON: May I proceed, Your
 16 Honor?
 17 JUDGE BARRETT: You may.
 18 MR. BOYDSTON: Thank you, Your Honor.
 19 BY MR. BOYDSTON:
 20 Q Ms. Saunders, please take a look at
 21 this.
 22 A I don't have a copy.

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1 Q Oh. No, you don't. Look at it from
 2 there.
 3 (Laughter)
 4 Take a minute to read it, and then let
 5 me know when you've read it.
 6 (Pause)
 7 A Okay. I think I've -- I think I've
 8 got the gist of this.
 9 Q Okay. You had testified earlier that
 10 you authorized counsel or directed your counsel
 11 to investigate or to make contact with different
 12 entities that you believed had -- there may have
 13 been conflicting claims between the MPAA and IPG
 14 based upon your review of IPG titles. Do you
 15 recall receiving this email, and was that
 16 consistent with your direction to counsel to try
 17 to find out what was going on with some of these
 18 conflicting claims?
 19 MS. PLOVNIK: Objection. Your Honor,
 20 I object. Well, first, Ms. Saunders is only
 21 copied on one portion of this email, not on the
 22 portion at the top. So that question is very

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1 confusing and misleading. She can't possibly be
 2 familiar with an email that she never was copied
 3 on or received.
 4 Also, the date of this is in 2011,
 5 which pre-dated the beginning of this case. So
 6 I'm a little confused as to where he's going with
 7 this, because -- or how it impeaches anything.
 8 MR. BOYDSTON: I'm only interested in
 9 the email that she was copied on. I provided the
 10 whole thing for completeness.
 11 JUDGE BARRETT: Okay. Well, she has
 12 to answer whether she can identify it or not.
 13 We'll go from there.
 14 THE WITNESS: I do -- honestly, I get
 15 more than 100 emails a day. I do not recall if I
 16 received -- I'm copied on it. Clearly, I
 17 received it. Do I recall it? No.
 18 BY MR. BOYDSTON:
 19 Q Okay. Do you recall -- and going back
 20 to your testimony about reviewing the IPG titles
 21 and IPG claimants, and you said in your own mind
 22 you saw some and said, "Hey, I think that's one

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1 of ours," do you recall Beckmann International in
 2 that regard?
 3 A No. That would not be a claimant that
 4 would leap to my mind.
 5 Q Okay. You implied that you don't
 6 recall this -- the one email that you were copied
 7 on. Is that the case, that you don't recall
 8 receiving this one way or the other?
 9 A I believe I did more than imply. I
 10 actually said I do not recall.
 11 Q Okay. Just trying to make sure it's
 12 clear. Do you recall whether or not you ever
 13 discussed this issue that is addressed with Mr.
 14 Olaniran? Now, I'm not asking for what he said
 15 of course.
 16 A No, no. No, I do not recall ever
 17 discussing this with Mr. Olaniran.
 18 MR. BOYDSTON: All right. Thank you,
 19 Your Honor. Nothing further.
 20 JUDGE BARRETT: Before we change
 21 courses in the middle of the stream here, Mr.
 22 Boydston, as I understand it, you are at this

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1 point in our proceedings responding to MPAA's
2 presentation and also making your own
3 presentation with regard to objections to MPAA
4 claims.

5 MR. BOYDSTON: No. No, we're not. We
6 are dealing with -- because they have not
7 actually -- the way it's going to work is is that
8 once they rest their rebuttal of IPG, then IPG
9 will put on witnesses and respond to their
10 rebuttal. Then, IPG will put on its rebuttal of
11 the MPAA, rest, the MPAA will come back on and
12 put on its defense of the IPG rebuttal.

13 JUDGE BARRETT: Okay. That's not how
14 I read this outline, but you know what? You have
15 26-1/2 hours among you. You can spend it the way
16 you want. So you're done for now with Ms.
17 Saunders at least.

18 MR. BOYDSTON: Yes.

19 JUDGE BARRETT: Okay.

20 MR. BOYDSTON: With the understanding
21 they have said she may come back up in the other
22 part of their case, and I may come back and --

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1 MS. PLOWNICK: We do intend to call
2 Ms. Saunders in our rebuttal presentation to IPG.

3 JUDGE BARRETT: Okay. Thank you.

4 Mr. MacLean, do you have questions for
5 Ms. Saunders?

6 MR. MacLEAN: Yes, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. MacLEAN:

9 Q Good afternoon, Ms. Saunders. I'm
10 Matthew MacLean. I represent the Settling
11 Devotional Claimants.

12 A Okay.

13 Q I believe we just met for the first
14 time a little earlier today.

15 A We did.

16 Q I want to ask you a couple of
17 questions about MPAA Exhibits 311 through 323.

18 A I just put those away. Hold on.
19 Okay. Yes.

20 Q And these are MPAA's representation
21 agreements with various of its claimants and
22 agents for claimants, is that right?

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1 A That's right.

2 Q Did all of these representation
3 agreements come from MPAA's records?

4 A From our business records, yes.

5 Q Did you find all of the representation
6 agreements that you were looking for?

7 A I don't -- we found representation
8 agreements for every title that was certified as
9 having been claimed by one of our claimants in
10 this proceeding. Whether we found all of the
11 representation agreements that we were looking
12 for in total, I do not believe that we did.

13 Q The claimants -- the MPAA claims in
14 this proceeding, you found the representation
15 agreements in MPAA's records.

16 A Yes. For every one, yes.

17 Q You didn't fabricate these -- these --

18 A Oh, no.

19 Q -- representation agreements.

20 A No. No.

21 Q You didn't prepare them -- there
22 wasn't a representation here that, for example,

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1 you couldn't find and you simply made one up to
2 submit as if it were the original.

3 A That is correct. I would in no way,
4 shape, or form ever do or sanction any such
5 activity.

6 Q Is that something you wouldn't even
7 dream of doing?

8 A I would fire anyone who was doing
9 something like that that worked for me.

10 Q And why is that?

11 A Because that would be fraud.

12 MR. MacLEAN: No further questions,
13 Your Honor.

14 JUDGE BARRETT: Any redirect?

15 REDIRECT EXAMINATION

16 BY MS. PLOWNICK:

17 Q Ms. Saunders, just very briefly,
18 counsel for IPG, Mr. Boydston, asked you if you
19 were aware if MPAA had ever done investigation or
20 requested additional documentation for any other
21 claimant other than IPG.

22 A Right.

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1 Q And you said you could not recall
2 which specific entity, but you remembered one
3 instance. Does the name All Global Media ring a
4 bell to you?

5 A Yes. That was in fact the claimant
6 that we did not conclude a representation
7 agreement with.

8 Q And All Global Media is represented by
9 Marian Oshita and Kathleen Ozmond?

10 A Correct.

11 Q Or purported to be?

12 A Purported to be, yes.

13 Q And they are -- and All Global Media
14 is not an MPAA-represented program --

15 A Absolutely not.

16 MS. PLOWNICK: All right. No further
17 questions.

18 MR. BOYDSTON: Nothing further, Your
19 Honor.

20 MR. MacLEAN: Nothing further, Your
21 Honor.

22 JUDGE BARRETT: Mr. Olaniran, you may

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1 call your next witness.

2 MR. OLANIRAN: Actually, there are no
3 -- I think --

4 MS. PLOWNICK: But we reserve the
5 right to call Ms. Saunders.

6 JUDGE BARRETT: So, Ms. Saunders, if
7 you would leave that marked exhibit on the desk.

8 THE WITNESS: Oh, this one?

9 JUDGE BARRETT: Yes.

10 THE WITNESS: Okay.

11 JUDGE BARRETT: You may step down.
12 (Witness was excused.)

13 Now, is it Mr. Roydston? You may call
14 your witness.

15 MR. BOYDSTON: Thank you, Your Honor.

16 TPG calls Raul Galaz.

17 WHEREUPON,

18 RAUL GALAZ

19 was called as a witness by counsel for TPG and,
20 having been first duly sworn, assumed the witness
21 stand, was examined and testified as follows:

22 JUDGE BARRETT: Ladies and gentlemen,

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1 I don't know what the temperature in the room
2 feels like to you, but if it feels like it does
3 to me please feel free to take off your jackets
4 or do whatever you need to be comfortable. Or
5 throw on a sweater. I don't -- I never know.

6 MR. BOYDSTON: Thank you, Your Honor.

7 DIRECT EXAMINATION

8 BY MR. BOYDSTON:

9 Q Mr. Galaz, where are you presently
10 employed?

11 A Worldwide Subsidy Group, doing
12 business as Independent Producers Group.

13 Q And how long have you been in that
14 position?

15 A I helped found that entity starting in
16 1998. And with the exception of about a year and
17 a few months, I was active in that company.

18 MR. BOYDSTON: Sorry for the run
19 around, Your Honor. I failed to bring up the
20 right binders.

21 BY MR. BOYDSTON:

22 Q Mr. Galaz, look at what has been

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1 marked as Exhibit 101 in one of the binders there
2 with you, and tell me if you are familiar with
3 that. Excuse me. Not 101. 100. I beg your
4 pardon.

5 JUDGE BARRETT: That would be in
6 Volume 2 of 4.

7 MR. BOYDSTON: Thank you, Your Honor.

8 THE WITNESS: 101?

9 BY MR. BOYDSTON:

10 Q I'm sorry, 100. I said 101. That was
11 a mistake. It's 100.

12 A Actually, mine doesn't have --

13 Q Well, then, it -- it would be in one
14 of the binders. It may have been a previous one
15 in yours. We got to the point with our binders
16 where we were mixing sizes a bit, so it may not
17 be exactly consistent binder to binder.

18 A All right. I found it.

19 Q And this is a declaration by you.

20 Correct?

21 A That is correct.

22 Q I believe that the last page, executed

Certificate of Service

I hereby certify that on Thursday, April 05, 2018 I provided a true and correct copy of the Designated Prior Testimony of Jane V. Saunders, Oral Testimony in Consolidated Docket Nos. 2012-6 CRB CD 2004-2009 (Phase II) and 2012-7 CRB SD 1999-2009 (Phase II), Transcript pp. 104-98 (December 8, 2014). to the following:

Independent Producers Group (IPG), represented by Brian D Boydston served via Electronic Service at brianb@ix.netcom.com

Devotional Claimants, represented by Benjamin S Sternberg served via Electronic Service at ben@lutzker.com

Signed: /s/ Lucy H Plovnick